

CHAPTER 254

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 254

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

An Act to provide for mutual assistance in criminal matters between Tanzania and foreign countries; to facilitate the provision and obtaining by Tanzania of such assistance and to provide for related matters.

[1st May, 1994]

[GN. No. 299 of 1994]

Acts Nos.
24 of 1991
2 of 2007
7 of 2018
2 of 2022

PART I

PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Mutual Assistance in Criminal Matters Act.

Interpretation
Act No.
7 of 2018
ss. 35 and 36

2.—(1) In this Act, unless the context requires otherwise—
“appropriate authority” means the authority of a foreign country which is authorised in terms of its law to make requests;
“criminal matter” shall be construed accordingly;
“dealing with property” includes removing the property from the United Republic or receiving or making a gift of it;
“financial institution” means a bank or other financial institution authorised as such under the Banking and Financial Institutions Act;
“foreign forfeiture order” means an order registered in the United Republic in terms of section 37(1) for the forfeiture of property located in the United Republic in respect of a foreign serious offence;
“foreign restraining order” means an order registered in the United Republic in terms of section 37(2) in respect of a

Cap. 342

- foreign serious offence and restraining any person from dealing with any property referred to in the order;
- “foreign pecuniary penalty order” means an order imposing a pecuniary penalty in respect of a foreign serious offence and registered in the United Republic in terms of section 37(1) but does not include an order for the payment of money by way of compensation, restitution or damages;
- “foreign serious offence” means a serious offence against a law of a foreign country;
- “magistrate” means a district magistrate or resident magistrate as defined in the Magistrate’s Courts Act;
- Cap. 11 “Minister” means the Minister responsible for legal affairs;
- “money-laundering offence”, in relation to the proceeds of a serious narcotics offence, means an offence involving-
- Cap. 256 (a) the engaging, directly or indirectly, in a transaction which involves money or other property, which is, in terms of the Proceeds of Crime Act;
- Cap. 256 (b) the receiving, possessing, concealing, disposing of property, which is proceeds of crime in terms of the Proceeds of Crime Act;
- “monitoring order” has the meaning assigned to it in the Proceeds of Crime Act;
- Cap. 256 “pecuniary penalty order” has the meaning assigned to it in the Proceeds of Crime Act;
- Cap. 256 “police officer” means any member of the Police Force of or above the rank of corporal;
- Cap. 256 “property-tracking document” has the meaning assigned to it in the Proceeds of Crime Act;
- Cap. 256 “restraining order” has the meaning assigned to it in the Proceeds of Crimes Act;
- Cap. 256 “serious narcotic drugs and psychotropic substances offence” has the meaning assigned to it in the Proceeds of Crime Act;
- “serious offence” has the meaning assigned to it under the Proceeds of Crime Act;
- Cap. 256 “tainted property” has the meaning assigned to it in the Proceeds of Crime Act.

(2) A reference in this Act to a law of a foreign country shall include a reference to a law of a part of, or a law in force in a part of, the foreign country.

(3) For purposes of this Act-

- (a) a colony, territory or protectorate of a foreign country;
 - (b) a territory for the international relations of which a foreign country is responsible; or
 - (c) a ship or aircraft of, or registered in a foreign country,
- shall, unless a contrary intention appears, be deemed to be part of that country.

Application of Act 3.-(1) Subject to subsections (2) and (3), whenever the Minister is satisfied that reciprocal provisions have been made by any foreign country to facilitate the provision to Tanzania of assistance in criminal matters, he may, by order published in the *Gazette*, declare that the provisions of this Act shall apply in relation to that foreign country.

(2) The Minister may, by order published in the *Gazette*, direct that the application of this Act in relation to a specified foreign country shall be subject to such conditions or modifications as may be specified in the statutory instrument, and thereupon this Act shall apply accordingly.

(3) This section shall not apply to Part II.

Aspects of mutual assistance
Acts Nos.
7 of 2018
ss. 35 and 37;
2 of 2022 s.32

4. For purposes of this Act, mutual assistance in criminal matters shall include-

- (a) the obtaining of evidence, documents or other articles;
- (b) the provision of documents and other records;
- (c) the location and identification of witnesses or suspects;
- (d) the execution of requests for search and seizure;
- (e) the making of arrangements for persons to give evidence or assist in investigations;
- (f) the forfeiture or confiscation of property in respect of offences;
- (g) the recovery of pecuniary penalties in respect of offences;

- (h) the restraining order of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences;
- (i) preserving and obtaining all forms of computer and telecommunication data;
- (j) interception of postal items;
- (k) interception of communications data;
- (l) covert electronic surveillance;
- (m) facilitating the taking of evidence by video conference;
- (n) carrying out undercover operations and controlled delivery;
- (o) the location of property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences; and
- (p) the service of documents.

Act not to prevent
other provision of
mutual assistance
Act No.
7 of 2018 s.38

5. This Act shall not be construed as preventing the provision or obtaining of assistance in criminal matters under a separate agreement, arrangement or practice with another foreign state otherwise than as provided in this Act.

Refusal of
assistance
Act No.
7 of 2018 s.35

6.-(1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Director of Public Prosecutions-

- (a) the request relates to the prosecution or punishment of a person for an offence that is, by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are reasonable grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are reasonable grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of his race, sex, religion, nationality or political opinions;

- (d) the request relates to prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Tanzania, would have constituted an offence under the military law of Tanzania but not under the ordinary criminal law of Tanzania;
 - (e) the granting of the request would prejudice public safety, public order, defence or the economic interests of Tanzania;
 - (f) the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent court or authority in the foreign country or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or
 - (g) except in the case of a request under section 15, the foreign country is not a country to which this Act applies.
- (2) A request by a foreign country for assistance under this Act may be refused if in the opinion of the Director of Public Prosecutions-
- (a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Tanzania would not have constituted an offence against the law of Tanzania;
 - (b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside Tanzania in similar circumstances would not have constituted an offence against the law of Tanzania;
 - (c) the request relates to the prosecution or punishment in respect of an act or omission where, if it had occurred in Tanzania at the same time and had constituted an offence against the law of Tanzania, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

- (d) the provision of the assistance could prejudice an investigation or proceedings in relation to a criminal matter in Tanzania;
- (e) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether in or outside Tanzania; or
- (f) the provision of the assistance would impose an excessive burden on the resources of Tanzania.

Assistance may
be conditional
Act No.
7 of 2018 s.35

7. Assistance in terms of this Act may be provided to a foreign country subject to such conditions as the Director of Public Prosecutions may determine.

Request by
Tanzania
Act No.
7 of 2018 s.35

8. Any request by Tanzania for assistance in any criminal matter in terms of this Act shall be made by the Director of Public Prosecutions.

Functions of
Director of Public
Prosecutions
Act No.
7 of 2018 s.39
Cap. 368

9. Subject to the provisions of the Extradition Act, the Director of Public Prosecutions shall, in the performance of his functions under this Act-

- (a) ensure that requests for legal assistance conform to the requirements of the laws of the United Republic and international obligations;
- (b) transmit and receive requests for legal assistance and execute or arrange for the execution of such requests directly with foreign countries;
- (c) where necessary, certify or authenticate or arrange for the certification or authentication of any document or other material supplied in response to a request for legal assistance;
- (d) take practical measures to facilitate the orderly and rapid disposition of requests for legal assistance;
- (e) negotiate and agree on conditions related to requests for legal assistance as well as ensuring compliance with those conditions;
- (f) make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response

- to a request for legal assistance to a requesting state or to authorise any other authority to do so; and
- (g) carry out such other tasks as provided for by this Act or which may be necessary for effective execution of mutual legal assistance.

[s. 8A]

Request for
assistance by
foreign country
Act No.
7 of 2018
ss. 35 and 40

10.-(1) A request by the appropriate authority of a foreign country for assistance in a criminal matter shall be made to the Director of Public Prosecutions.

(2) A request made in terms of subsection (1), shall contain or be accompanied by a document giving the following information:

- (a) the name of the authority concerned with the criminal matter to which the request relates;
- (b) a description of the nature of the criminal matter and a summary of the relevant facts and laws;
- (c) a description of the purpose of the request and the nature of the assistance being sought;
- (d) details of the procedure that the foreign country wishes to be followed by Tanzania in giving effect to the request including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request;
- (e) the wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes;
- (f) details of the period within which the foreign country wishes that the request be complied with;
- (g) if the request involves a person travelling from Tanzania to the foreign country, details of allowances to which the person will be entitled and of the arrangements for accommodation for the person, while the person is in the foreign country pursuant to the request;
- (h) the nature of the criminal matters and whether or not criminal proceedings have been instituted;

- (i) where criminal proceedings have not been instituted, the offence which the foreign country believes has been, is being or will be committed, together with a summary of known facts;
- (j) where criminal proceedings have been instituted-
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which the person stands accused, and a summary of the facts and the penalties which may be imposed;
 - (iv) the stage reached in the proceedings; and
 - (v) any date fixed for further stages in the proceedings;
- (k) any other information required to be included with the request under a treaty or other arrangement between Tanzania and the foreign country; and
- (l) any other information that may assist in giving effect to the request, but failure to comply with this subsection shall not be a ground for refusing the request.

[s. 9]

Confidentiality
Act No.
7 of 2018 s.41

11. The confidentiality of a request and its contents and the information and materials supplied under this Act shall be maintained except for disclosure in the criminal matter specified in the request and where otherwise authorised by the requesting state.

[s. 9A]

Language
Act No.
7 of 2018 s.41

12. All documents in support of a request for assistance under this Act shall be either in English or Kiswahili language.

[s. 9B]

Costs
Act No.
7 of 2018 s.41

13.-(1) Ordinary costs for executing a request shall be borne by the United Republic, unless otherwise determined by United Republic and a requesting state.

(2) Where expenses of a substantial or extraordinary nature are or will be required to execute the request, the requesting

state shall consult in advance with the view to negotiating and agreeing on the manner in which the costs shall be borne.

(3) For purposes of subsection (2), substantial or extraordinary expenses may include-

- (a) fees and reasonable expenses of expert witnesses;
- (b) any travelling costs to enable a witness to travel to the requesting country to assist in a criminal investigation or criminal proceedings;
- (c) cost of establishing and operating live video links;
- (d) costs of temporarily transferring persons in custody subject to a request under this Act;
- (e) costs incurred for the interception of electronic communication; and
- (f) costs incurred for conducting surveillance.

[s. 9C]

PART II

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

Request by
Tanzania
for taking of
evidence
Act No.
7 of 2018 s.35

14. The Director of Public Prosecutions may request an appropriate authority of a foreign country to arrange for-

- (a) evidence to be taken in the foreign country; or
- (b) documents or other articles in the foreign country to be produced, for purposes of proceedings in relation to a criminal matter in Tanzania.

[s. 10]

Requests for
evidence by
foreign country
Act No.
7 of 2018
ss. 35 and 42

15.-(1) Where a request is made by the appropriate authority of foreign country for-

- (a) evidence to be taken or collected in Tanzania; or
- (b) documents or other articles in Tanzania to be produced for purposes of proceedings or investigation in relation to a criminal matter in a foreign country,

the Director of Public Prosecutions may, subject to such terms and conditions as he may determine, authorise the taking or collection of the evidence or production of the documents or other articles, and the transmission of the evidence, documents or other articles to the foreign country.

(2) Where the Director of Public Prosecutions authorises the taking or collection of evidence or the production of documents or other articles in terms of subsection (1)-

- (a) in the case of the taking of evidence, a magistrate may take the evidence on oath of each witness appearing before him to give evidence in relation to the matter, and shall-
 - (i) cause the evidence to be put in writing and certify that the evidence was taken by him; and
 - (ii) cause the evidence so certified to be sent to the Director of Public Prosecutions;
- (b) in the case of the production of documents or other articles, a magistrate may, subject to subsection (6), require the production of the documents or other articles and shall send the documents, or copies of the documents, certified by him to be true copies, or the other articles, to the Director of Public Prosecutions; or
- (c) if the laws of a requesting country do not require evidence to be taken before a magistrate on oath instead of following the process in paragraph (a) an investigation officer may-
 - (i) interview a person and record his statement;
 - (ii) collect documents, articles or other materials; and
 - (iii) certify that the statement was recorded or the article was collected by him.

(3) The evidence of any witness may be taken in the presence or absence of the person to whom the proceedings in the foreign country relate or in the presence of his legal representative, if any.

(4) The magistrate conducting proceedings in terms of subsection (2), may permit-

- (a) any other person giving evidence or producing documents or other articles at the proceedings before him; and
- (b) the appropriate authority of the foreign, to be legally represented at the proceedings.

(5) The certificate by the magistrate made in terms of subsection (2), shall state whether, when the evidence was taken or the documents or other articles were produced-

- (a) the person to whom the proceedings in the foreign country relate or his legal representative; or
- (b) any person other than the person giving evidence or producing documents or other articles his legal representative,

was present.

(6) Subject to subsection (7), the laws of Tanzania with respect to the compelling of persons to attend before a magistrate, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for any offence shall, *mutatis mutandis*, apply with respect to the compelling of persons to attend before a magistrate and to giving evidence, answering questions and the production of documents or other articles, for the purposes of this section.

(7) For purposes of this section, the person to whom the proceedings in the foreign country relate shall be competent but not compellable to give evidence.

[s. 11]

PART III

ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

16.-(1) This section applies to proceedings or investigations relating to a serious offence against the law of Tanzania if there are reasonable grounds to believe that a thing relevant to the proceedings or investigations may be located in a foreign country to which this Act applies.

(2) Subject to subsection (1), the Director of Public Prosecutions may request an appropriate authority of a foreign country to obtain a warrant or other instrument authorising the search for a thing relevant to the proceedings or investigation and, if such a thing, or any other thing that is or may be relevant to the proceedings or investigation, as the case may be, is found pursuant to such a search, authorising the seizure of that thing.

(3) A request shall be accompanied by an affidavit of a person verifying the grounds on which the request is made.

[s. 12]

Requests by
foreign countries
for search and
seizure
Act No.
7 of 2018 s.35

17.-(1) Where-

- (a) proceedings have, or an investigation relating to a criminal matter involving a serious offence has, commenced in a foreign country;
- (b) there are reasonable grounds to believe that a thing relevant to the proceedings or investigation is located in Tanzania; and
- (c) the appropriate authority of the foreign country requests the Director of Public Prosecutions to arrange for the issue of a search warrant in terms of this section in relation to that thing,

the Director of Public Prosecutions may, in writing, authorise a police officer to apply to a magistrate in the area in which that thing is believed to be located for the search warrant requested by the foreign country.

(2) Where a police officer authorised under subsection (1) has reason to believe that the thing to which the request relates is or will be, at a specified time-

- (a) on a person;
- (b) in the clothing that is being worn by a person; or
- (c) otherwise in a person's immediate control,

the police officer may lay before a magistrate information on oath setting out the grounds for that belief and apply for the

issue of a warrant in terms of this section to search the person for that thing.

(3) Where an application is made in terms of subsection (2), the magistrate may, subject to subsection (6), issue a warrant authorising a police officer-

- (a) to search the person for the thing; and
- (b) to seize anything found in the course of the search that the police officer believes, on reasonable grounds,

to be relevant to the proceedings or investigation.

(4) Where a police officer authorised in terms of subsection (1) has reason to believe that the thing to which the request relates is or will be at a specified time, upon any land or in any premises, the police officer may-

- (a) lay before a magistrate information on oath setting out the grounds for that belief; and
- (b) apply for the issue of a warrant in terms of this section to search the land or premises for that thing.

(5) Where an application is made in terms of subsection (4), the magistrate may, subject to subsection (6), issue a warrant authorising a police officer-

- (a) to enter upon the land or upon or into the premises;
- (b) to search the land or premises for the thing; and
- (c) to seize anything found in the course of the search that the police officer believes, on reasonable ground, to be relevant to the proceedings or investigation.

(6) A magistrate shall not issue a warrant in terms of this section unless-

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information, if any, as the magistrate may require concerning the grounds on which the issue of the warrant is sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be stated in a warrant issued in terms of this section-

- (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorised;
- (b) whether the search is authorised at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorised to be seized; and
- (d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.

(8) Where in the course of searching under a warrant issued in terms of this section for a thing of a kind specified in the warrant, the police officer finds another thing that the police officer believes on reasonable grounds-

- (a) to be relevant to the proceedings or investigation in the foreign country or to afford evidence as to the commission of an offence in Tanzania; and
- (b) is likely to be concealed, lost or destroyed if it is not seized,

the warrant shall be deemed to authorise the police officer to seize the other thing.

(9) Where a police officer finds, as a result of a search in accordance with a warrant issued in terms of this section, a thing which the police officer seizes wholly or partly because he believes on reasonable grounds the thing to be relevant to the proceedings or investigation in the foreign country, the police officer shall deliver the thing into the custody and control of the Inspector General of Police.

(10) Where a thing is delivered into the custody and control of the Inspector General of Police in terms of subsection (9), the Inspector General of Police shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized, pending a direction in writing from

the Director of Public Prosecutions as to the manner in which the thing is to be dealt with, which may include a direction that the thing be sent to an authority of a foreign country.

(11) A police officer who executes a search warrant issued in terms of subsection (3) or (5) shall, as soon as practicable after the execution of the warrant, give to the person searched, or to the owner or occupier of the land or premises searched, or leave in a prominent position on such land or at such premises, as the case requires, a notice setting out-

- (a) the name and rank of the police officer;
- (b) the name of the magistrate who issued the warrant and the day on which it was issued; and
- (c) a description of anything seized and removed in accordance with the warrant.

(12) A police officer acting in accordance with a warrant issued in terms of subsection (3) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person in terms of the warrant.

(13) A person shall not be searched under a warrant issued in terms of subsection (3) except by a person of the same sex and the search shall be conducted with strict regard to decency.

(14) This section shall not be taken to authorise a police officer, in executing a warrant issued in terms of subsection (3), to carry out a search by way of an examination of a body cavity of a person.

(15) Where a police officer is authorised under a warrant issued in terms of subsection (3) to search a person, the police officer may also search-

- (a) the clothing that is being worn by the person; and
- (b) any property in, or apparently in, the person's immediate control.

[s. 13]

PART IV

ARRANGEMENT FOR PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

Request for
removal of
certain persons to
Tanzania
Act No.
7 of 2018 s.35

18.-(1) Where-

- (a) proceedings relating to a criminal matter have commenced in Tanzania; and
- (b) the Director of Public Prosecutions is of the opinion that a person who is in a foreign country to which this Act applies-
 - (i) is a foreign prisoner;
 - (ii) is capable of giving evidence relevant to the proceedings; and
 - (iii) has given his consent to being removed to Tanzania for the purpose of giving evidence in the proceedings,

the Director of Public Prosecutions may request the appropriate authority of the foreign country to authorise the attendance of the person at the proceedings relating to or in connection with the criminal matter.

(2) Where-

- (a) an investigation relating to a criminal matter has commenced in Tanzania; and
- (b) the Director of Public Prosecutions is of the opinion that a person who is in a foreign country to which this Act applies-
 - (i) is a foreign prisoner;
 - (ii) is capable of giving assistance in relation to the investigation; and
 - (iii) has given his consent for being removed to Tanzania for the purpose of giving assistance in relation to the investigation,

the Director of Public Prosecutions may request the appropriate authority of the foreign country to authorise the removal of the person to Tanzania for the purpose of giving assistance in relation to the investigation.

(3) Where the Director of Public Prosecutions makes a request in terms of subsection (1) or (2), he may make arrangements with an appropriate authority of the foreign country for-

- (a) the removal of the person to Tanzania;
- (b) the custody of the person while in Tanzania;
- (c) the return of the person to the foreign country; or
- (d) any other relevant matter.

[s. 14]

Arrangements
between Director
of Public
Prosecutions
and Minister
in relation to
custody of certain
persons
Act No.
7 of 2018 s.35

19.-(1) The Director of Public Prosecutions may make arrangements with the Minister in relation to the keeping in custody of persons who are in Tanzania pursuant to requests under section 18.

(2) The Director of Public Prosecutions may arrange with the Minister for the variation or revocation of arrangements made in terms of subsection (1).

[s. 15]

Custody of
certain persons
Act No.
7 of 2018 s.35

20. Where-

- (a) a person is to be brought to Tanzania from a foreign country pursuant to a request in terms of section 18; and
- (b) the foreign country requests that the person be kept in custody while he is in Tanzania,

the person shall, while he is in Tanzania or travelling to or from Tanzania pursuant to the request, be kept in such custody as the Director of Public Prosecutions may direct in writing.

[s. 16]

Immunities
Act No.
7 of 2018 s.35

21.-(1) Where a person is in Tanzania-

- (a) pursuant to a request in terms of section 18; or
- (b) to give evidence in proceedings or to give assistance in relation to an investigation pursuant to request made by or on behalf of the Director of Public Prosecutions, not being a request in terms of section 18, for assistance in a criminal matter,

the person, subject to subsection (2), shall not be detained, prosecuted or punished in Tanzania for any offence that is alleged to have been committed before the person's departure from the foreign country pursuant to the request, or be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred before the person's departure from the foreign country pursuant to the request, or be required to give evidence in any proceedings in Tanzania other than the proceedings to which the request relates.

(2) Subsection (1) shall cease to apply to a person-

- (a) once the person has left Tanzania; or
- (b) where the person has had the opportunity to leave Tanzania but has remained in Tanzania otherwise than for-
 - (i) the purpose to which the request related;
 - (ii) the purpose of giving evidence in proceedings in Tanzania certified by the Director of Public Prosecutions, in writing, to be proceedings in which it is desirable that the person give evidence; or
 - (iii) the purpose of giving assistance in relation to an investigation in Tanzania certified by the Director of Public Prosecutions, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(3) A certificate given by the Director of Public Prosecutions for purposes of subparagraph (ii) or (iii) of paragraph (b) of subsection (2) shall have effect from the day specified in the certificate.

[s. 17]

Status of person
prosecuted
for offence
committed after
departure from
foreign country
Act No.
7 of 2018 s.35

22.-(1) Where a person has come to Tanzania pursuant to a request to a foreign country in terms of section 18, the person shall be taken, for the purposes of this Act, to be in Tanzania pursuant to the request during any period which the person remains in Tanzania for the purpose of being tried for a Tanzania criminal offence that the person is alleged to have committed after his arrival in Tanzania from the foreign country.

(2) Without limiting the generality of subsection (1) the person shall be kept in such custody as the Director of Public Prosecutions directs in terms of section 20.

[s. 18]

Limitation on
use of evidence
given by certain
persons
Act No.
7 of 2018 s.35

23. Where-

- (a) a person is in Tanzania-
 - (i) pursuant to a request in terms of section 18;
 - (ii) to give evidence in proceedings, or to give assistance in relation to an investigation pursuant to a request made by or on behalf of the Director of Public Prosecutions, not being a request in terms of section 18, for assistance in criminal matters; or
- (b) the person has given evidence in the proceedings to which the request related or in proceedings certified by the Director of Public Prosecutions in terms of subparagraph (ii) of paragraph (b) of subsection (2) of section 21 in relation to that person,

the evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against the law of Tanzania other than the offence of perjury in relation to the giving of that evidence.

[s. 19]

Conditions of
imprisonment
Act No.
7 of 2018 s.35
Cap. 158

24. The provisions of the Prisons Act, relating to-

- (a) the conditions of imprisonment of persons convicted of offences;
- (b) the treatment of any such persons during imprisonment; and
- (c) the transfer of any such persons from prison to prison, shall, *mutatis mutandis*, apply in relation to a person who is in Tanzania pursuant to a request in terms of section 18 and who has been committed to a prison in accordance with a direction of the Director of Public Prosecutions in terms of this Act.

[s. 20]

Release of person from custody
Act No.
7 of 2018 s.35

25. Where-

- (a) a person is being held in custody in accordance with a direction of the Director of Public Prosecutions in terms of section 20; and
 - (b) the foreign country from which the person has been brought requests release from custody,
- the Director of Public Prosecutions shall direct that the person be released from custody.

[s. 21]

Escaping

26.-(1) A person who escapes from lawful custody while in Tanzania pursuant to a request in terms of section 18 commits an offence and on conviction shall be liable to imprisonment for a term not exceeding two years.

Cap. 20

(2) Sections 35, 36 and 37 of the Criminal Procedure Act, shall, *mutatis mutandis*, apply as if a reference in those sections to custody in respect of any offence against the law of Tanzania were a reference to custody while in Tanzania pursuant to a request in terms of section 18.

[s. 22]

Arrest of person who has escaped from custody
Act No.
7 of 2018 s.35

27.-(1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person-

- (a) has been brought to Tanzania pursuant to a request in terms of section 18; and
- (b) has escaped from lawful custody while in Tanzania pursuant to the request.

(2) A person who has been arrested in terms of subsection (1) shall be returned to custody.

[s. 23]

Requests for giving of evidence at hearing in foreign country
Act No.
7 of 2018 s.35

28.-(1) Where-

- (a) proceedings relating to a criminal matter have commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests the attendance at a hearing in connection with the proceedings of a prisoner who is in Tanzania;

- (c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceedings; and
- (d) the Director of Public Prosecutions is satisfied that-
 - (i) the prisoner has consented to giving evidence in the foreign country; and
 - (ii) the foreign country has given adequate undertakings in respect of the matter referred to in subsection (3),

the Director of Public Prosecutions may, after consultation with the Minister, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceedings and shall make arrangements for the travelling of the prisoner to the foreign country in the custody of a police or prison officer designated by the Director of Public Prosecutions for the purpose.

(2) Where-

- (a) proceedings relating to a criminal matter have commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests the attendance at the proceedings of a person in Tanzania who is not a prisoner;
- (c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceedings; and
- (d) the Director of Public Prosecutions is satisfied that-
 - (i) the person has consented to giving evidence in the foreign country; and
 - (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3),

the Director of Public Prosecutions may make arrangements for the travelling of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purposes of a request that a person give evidence in the foreign country shall be-

- (a) that the person shall not-

- (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Tanzania;
- (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Tanzania;
- (iii) be required to give evidence in any proceedings in the foreign country other than the proceedings to which the request relates,

unless the person has left the foreign country or has had the opportunity to leave the foreign country but has remained in that country otherwise than for the purposes of giving evidence in the proceedings to which the request relates;

- (b) that any evidence given by the person in the proceedings to which the request relates shall be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;
- (c) that the person shall be returned to Tanzania in accordance with arrangements agreed by the Director of Public Prosecutions;
- (d) in a case where the person is being held in custody in Tanzania and the Director of Public Prosecutions requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country-
 - (i) the making of appropriate arrangements for that purpose;
 - (ii) that the person will not be released from custody in the foreign country unless the Director of Public Prosecutions notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the law of Tanzania; and

- (iii) if the person is released in the foreign country in terms of subparagraph(ii), that person's accommodation and other expenses pending the completion of the proceedings to which the request relates shall be paid for by the foreign country; and
- (e) such other matters as the Director of Public Prosecutions thinks appropriate.

[s. 24]

Requests for assistance in relation to investigations in foreign countries
Act No. 7 of 2018
ss. 35 and 43

29.-(1) Where-

- (a) an investigation relating to a criminal matter has commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests the removal of a prisoner who is in Tanzania to the foreign country for the purpose of giving assistance in relation to the investigation;
- (c) there are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and
- (d) the Director of Public Prosecutions is satisfied that-
 - (i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3),

the Director of Public Prosecutions may, after consultation with the Minister, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give assistance in relation to the investigation and shall make arrangements for the travelling of the prisoner to the foreign country in the custody of a police or prison officer designated by the Director of Public Prosecutions for the purpose.

(2) Where-

- (a) an investigation relating to a criminal matter has commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests that a person in Tanzania who is not a prisoner, travel

to the foreign country to give assistance in relation to the investigation;

- (c) there are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation;
- (d) the Director of Public Prosecutions is satisfied that-
 - (i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3),

the Director of Public Prosecutions may make arrangements for the travelling of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purposes of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation shall be-

- (a) that the person shall not be-
 - (i) detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed before the person's departure from Tanzania;
 - (ii) subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred before the person's departure from Tanzania; or
 - (iii) required to give evidence in any proceedings in the foreign country other than the proceedings to which the request relates,

unless the person left the foreign country or has had the opportunity to leave the foreign country but has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates; and

- (b) that the person shall be returned to Tanzania in accordance with arrangements agreed by the Director of Public Prosecutions;
- (c) in a case where the person is being held in custody in Tanzania and the Director of Public Prosecutions requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country-
 - (i) that appropriate arrangements are made for that purpose;
 - (ii) that the person shall not be released from custody in the foreign country unless the Director of Public Prosecutions notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the law of Tanzania;
 - (iii) if the person is released in the foreign country in terms of subparagraph (ii), that the person's accommodation and of the investigation to which the request relates shall be paid for by the foreign country; and
- (d) such other matters as the Director of Public Prosecutions thinks appropriate.

[s. 25]

Evidence by video
conferencing
Act No.
7 of 2018 s.44

30.-(1) Any evidence, production or article of any form of mutual legal assistance under this Act may be provided by means of video conferencing or other technology.

(2) The evidence shall include the interviewing of witnesses for the purposes of investigation, identification of a person or thing or the provision of witness evidence during court proceedings including trial.

(3) The Minister may make rules for better carrying out of the provisions of this section.

[s. 25A]

Effect of removal
to foreign country
on prisoner's term
of imprisonment

31. Where a prisoner who is serving a term of imprisonment for an offence against the law of Tanzania is released from prison pursuant to a request by the appropriate authority of the foreign country under section 28 or 29, the prisoner shall, while in custody in connection with the request, including custody outside Tanzania, be deemed to be continuing to serve that term of imprisonment.

[s. 26]

PART V

CUSTODY OF PERSONS IN TRANSIT

Transit
Act No.
7 of 2018 s.35

32.—(1) Where—

- (a) a person is to be transported in custody from a foreign country through Tanzania to another foreign country for the purposes of giving evidence in proceedings or giving assistance in relation to an investigation relating to a criminal matter in the other foreign country; and
- (b) at least one of these foreign countries is a foreign country to which this Act applies,

the person may be transported through Tanzania in the custody of another person and, if an aircraft, vehicle or train by which the person is being transported lands or calls at a place in Tanzania, shall be kept in such custody as the Director of Public Prosecutions after consultation with the Minister, directs in writing until his transportation is continued.

(2) Where a person is being held in custody pursuant to a direction in terms of subsection (1) and the person's transportation is not in the opinion of the Director of Public Prosecutions, continued within a reasonable time, the Director of Public Prosecutions may direct that the person be transported in custody to the foreign country from which the person was first transported.

[s. 27]

Escaping **33.**–(1) A person who, being a person being kept in custody pursuant to a direction under subsection (1) of section 32 escapes from such custody, commits an offence and on conviction shall be liable to imprisonment for a term not exceeding two years.

Cap. 20 (2) Sections 35, 36 and 37 of the Criminal Procedure Act, shall, *mutatis mutandis*, apply as if a reference in those sections to custody in respect of any offence against the law of Tanzania were a reference to custody pursuant to a direction in terms of subsection (1) of section 32.

[s. 28]

Arrest of person in transit **34.**–(1) A police officer may, without warrant arrest a person, if the police officer has reasonable grounds to believe that the person was being held in custody pursuant to a direction under subsection (1) of section 32 and has escaped from custody.

(2) A person arrested under subsection (1) shall be returned to custody.

[s. 29]

PART VI PROCEEDS OF CRIME

Requests for enforcement of orders
Act No.
7 of 2018 s.35

35. The Director of Public Prosecutions may request an appropriate authority of a foreign country to which this Act applies to make arrangements for the enforcement of-

- (a) a forfeiture order made in Tanzania against property that is believed to be located in that country;
- (b) a pecuniary penalty order made in Tanzania where some or all the property available to satisfy the order is believed to be located in that country, or
- (c) a restraining order made in Tanzania against property that is believed to be located in that country,

if the order is in respect of a serious offence.

[s. 30]

Requests for
issue of orders in
foreign countries
Act No.
7 of 2018 s.35

36. Where criminal proceedings or criminal investigations have commenced in Tanzania in relation to a serious offence, the Director of Public Prosecutions may request an appropriate authority of a foreign country to which this Act applies to direct the issue of a warrant, order or other instrument similar in nature to any of the following warrants or orders under the law for the time being in force relating to proceeds of crime in respect of the serious offence-

- (a) a search warrant for tainted property;
- (b) a restraining order;
- (c) a production order in respect of a property-tracking document;
- (d) a search warrant in respect of a property-tracking document; or
- (e) a monitoring orders.

[s. 31]

Registration of
orders
Act No.
7 of 2018 s.45

37.-(1) Where-

- (a) an appropriate authority of a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of-
 - (i) a foreign forfeiture order made in respect of a foreign serious offence against a property that is believed to be located in Tanzania; or
 - (ii) a foreign pecuniary penalty order made in respect of a foreign serious offence where some or all of the property available to satisfy the order is believed to be located in Mainland Tanzania; and
- (b) the Director of Public Prosecutions is satisfied that-
 - (i) the forfeiture order or pecuniary penalty order was properly made against the person; and
 - (ii) forfeiture order or pecuniary penalty order is not subject to appeal in the foreign country,

the Director of Public Prosecutions may, upon application, obtain the registration of the order with the High Court.

(2) Where an appropriate authority of a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a restraining order issued in respect of a foreign serious offence against a property that is believed to be located in Tanzania, the Director of Public Prosecutions may, on application, obtain the registration of the order by the High Court.

(3) Where, on application in terms of subsection (1) or (2), the High Court is satisfied from the documents filed on record, or from any other evidence, that the foreign forfeiture order, the foreign pecuniary penalty order or the restraining order was properly made against the person concerned, the High Court may register the order.

(4) The High Court may regard any evidence adduced in a foreign court as conclusive of any matter or fact stated in the documents.

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(5) Where the High Court refuses to register the order under subsection (3), the refusal order shall be appealable as if it were an order made under the Proceeds of Crimes Act.

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(6) A forfeiture order registered with the High Court in terms of this section shall have effect and may be enforced, as if it were a forfeiture order made by a court under the Proceeds of Crime Act at the time of registration.

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(7) A pecuniary penalty order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a pecuniary penalty order made by a court under the Proceeds of Crime Act at the time of registration and requiring the payment to Tanzania of the amount payable under the order.

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(8) A restraining order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a restraining order made by a court under the Proceeds of Crime Act at the time of registration.

(9) Where any order is registered with the High Court in terms of this section, any amendments made to the order, whether before or after registration, may be registered in the

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same way as the order and amendments shall not, for the purposes of this Act and the Proceeds of Crime Act, have effect until they are registered.

(10) A sealed or authenticated copy of an order or amendment shall be regarded for the purposes of this Act as the same as the sealed or authenticated original copy, but registration effected by means of a copy shall cease to have effect at the end of twenty one days, unless the sealed or authenticated original copy has been subsequently registered or time has been extended by the court.

(11) The Director of Public Prosecutions may apply to the High Court for the amendment of the application or the cancellation of any registration made in terms of this section.

(12) Without prejudice to the generality of subsection (11), the Director of Public Prosecutions may apply for a cancellation in terms of that subsection if he is satisfied that-

- (a) the order has ceased to have effect in the foreign country in which it was made; or
- (b) the cancellation of the order is appropriate having regard to the arrangements entered into between the United Republic and the foreign country in relation to enforcement of orders of the kind.

(13) Where an application is made to the High Court for cancellation of a registration in terms of subsection (12), the High Court shall cancel the registration accordingly.

[s. 32]

Sharing of
proceeds
Acts Nos.
2 of 2007 s.22;
7 of 2018 s.35

38.-(1) The Government may dispose of property confiscated within the United Republic upon a request by a foreign authority where there is an agreement concluded between the Government of the United Republic and the Government of the requesting foreign territory.

(2) The Director of Public Prosecutions may, where he considers it appropriate either for purposes of compliance with an international arrangement to which the United Republic is committed or for the interest of courtesy among states, order

the property or any part of the property forfeited or the value of that property to be given out or remitted to the requesting Government.

[s. 32A]

Requests for
search and
seizure warrants
in respect of
tainted property
Act No.
7 of 2018 s.35

39.-(1) Where-

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign serious offence;
- (b) there are reasonable grounds for believing that tainted property in relation to the offence is located in Tanzania; and
- (c) the appropriate authority of the foreign country requests the Director of Public Prosecutions to obtain the issue of search warrant under the Proceeds of Crime Act, in relation to the tainted property,

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the Director of Public Prosecutions may, in writing, authorise a police officer to apply to a magistrate of the area concerned for the search warrant requested by the appropriate authority of the foreign country.

(2) The area shall be the area in which the tainted property, or some or all of the tainted property, is believed to be located.

[s. 33]

Requests
for interim
restraining orders
Act No.
7 of 2018 s.35

40. Where-

- (a) criminal proceedings have commenced in a foreign country in respect of a foreign serious offence;
- (b) there are reasonable grounds for believing that tainted property that may be made or is about to be made, the subject of restraining order is located in Tanzania; and
- (c) the appropriate authority of the foreign country requests the Director of Public Prosecutions to obtain the issue of restraining order under the Proceeds of Crime Act, against the property,

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the Director of Public Prosecutions may authorise an application to the High Court for the issue of the restraining

order requested by the appropriate authority of the foreign country.

[s. 34]

Requests for
information
gathering orders
Act No.
7 of 2018 s.46

41. Where-

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign serious offence; and
 - (b) the appropriate authority of a foreign country requests the United Republic to obtain information about the property or any other information which is reasonably believed to be relevant to proceedings or investigation,
- the Director of Public Prosecutions may, in writing, authorise the head of an investigating agency to obtain information requested in accordance with the provisions of the Proceeds of Crimes Act or any other written laws.

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[s. 35]

PART VII MISCELLANEOUS PROVISIONS

Service of
documents
Act No.
7 of 2018 s.35

42.-(1) Where the appropriate authority of a foreign country requests the Director of Public Prosecutions to arrange for the service in Tanzania of process relating to a criminal matter in the foreign country, the Director of Public Prosecutions may arrange for the service of the process.

(2) Without limiting the manner in which the service of a document in a foreign country may be proved in Tanzania, service of such document may be proved by the affidavit of the person who served the document.

[s. 36]

Evidence
Act No.
7 of 2018 s.35

43. A certificate by the Director of Public Prosecutions stating that-

- (a) Tanzania or a specified foreign country is a party to a specified treaty;

- (b) a specified treaty entered into force for Tanzania or a specified foreign country on a specified day; or
 - (c) on a day specified in the certificate, a specified treaty remained in force for Tanzania or a specified country,
- shall, for purposes of any proceedings under this Act, be *prima facie* evidence of the matters stated in the certificate.

[s. 37]

Authentication
of documents
Act No.
7 of 2018 s.47
Cap. 256

44.—(1) In proceedings under this Act, or under the Proceeds of Crime Act, arising directly or indirectly from a request made under this Act, any document that is duly authenticated in terms of subsection (2) shall be admissible in evidence.

(2) A document shall be regarded a duly authenticated for the purpose of subsection (1) if it purports to be—

- (a) signed or certified by a judge, magistrate or officer in or of a foreign country; or
- (b) authenticated by oath of a witness or an officer of the Government of the foreign country or sealed with an official public seal of the foreign country or of a Minister.

(3) This section shall not be construed as preventing the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Tanzania.

[s. 38]

Authentication
of witness
statement,
deposition or
affidavit
Act No.
7 of 2018 s.48

45.—(1) A witness statement, deposition or an affidavit obtained pursuant to a request made under this Act shall, if it satisfied the conditions set out in this section, be admissible in evidence.

(2) A witness statement shall be admissible in evidence if it is—

- (a) signed, certified and contains a declaration by the person making it that it is true; and
- (b) certified by a magistrate, judge or an officer in or of the Government of a foreign country.

(3) A deposition shall be admissible in evidence if it is—

- (a) a sworn deposition; and
- (b) certified or verified by a magistrate, commissioner for oath or judge in a foreign country.

- (4) An affidavit shall be admissible in evidence if it is-
 - (a) signed, verified and sworn by the person who made it; and
 - (b) signed by a judge, magistrate, commissioner for oath or an officer in the Government of a foreign country.

[s. 38A]

Electronic record
or data
Act No.
7 of 2018 s.48

46.—(1) Electronic record or data message obtained pursuant to a request made under this Act shall be admissible in evidence if-

- (a) the maker or a person who collected the record or data certifies-
 - (i) the reliability of the manner in which the record or data was generated, stored or communicated; and
 - (ii) the reliability of the manner in which the integrity of the record or data was maintained; and
- (b) the authority in a foreign country or an officer in the foreign country authenticates receipt of that electronic record or data from the maker or a person who collected it.

[s. 38B]

Other forms of
evidence
Act No.
7 of 2018 s.48

47. Nothing shall be construed as preventing production of any evidence, article, any other form of mutual legal assistance under this Act, orally, by means of video conferencing or any other technology.

[s. 38C]

Regulations

48.—(1) The Minister may make regulations prescribing matters-

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for-

- (a) the practice and procedure in relation to the performance by magistrates of functions under this Act, including-
 - (i) the summoning of witnesses;

- (ii) the production of documents;
- (iii) the taking of evidence on oath;
- (iv) the immunity of person and legal practitioners appearing before magistrates and of witnesses;
- (b) the forms of any orders, process or certificates made, issued or given in terms of this Act;
- (c) generally, the facilitating of communication between Tanzania and foreign countries for the purposes of this Act; and
- (d) penalties, not exceeding a fine of one hundred thousand shillings, for any contravention of any regulation.

[s .39]

